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Supreme Court of the United States

IN THE

OCTOBER TERM, 1943.

No. 972.

LOUISVILLE PROPERTY COMPANY, H. C. WILLIAMS, Assignee,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

The petitioner, Louisville Property Company, H. C. Williams, Assignee, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit entered in the above entitled cause on February 7, 1944.

OPINIONS BELOW.

The opinions of The Tax Court of the United States (formerly the United States Board of Tax Appeals) are reported at 41 B. T. A. 1249 (R. 47-54) and at 47 B. T. A. 23 (R. 69-84). The opinion of the Circuit Court of Appeals (R. 160-166) is reported at 140 F. 2d 547.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on February 7, 1944 (R. 159). The jurisdiction of this Court is invoked under § 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

1. Was H. C. Williams, Assignee of property formerly belonging to Louisville Property Company, transferred to him in 1935 in trust for the benefit of the creditors and stockholders of said company, under court order, "operating the property or business" of Louisville Property Company in 1935 and 1936 under the provisions of § 52 of the Revenue Acts of 1934 and 1936 and, therefore, required to render income tax returns as a corporation rather than as a trust when admittedly said corporation divested itself of all property in 1919 and had no property or business in 1935 and 1936 and no interest in the said property?

2. Was a prior decision of the Board of Tax Appeals, to the effect that H. C. Williams, Assignee for the Benefit of the Creditors and Stockholders of Louisville Property Company, was a separate taxable person and entity from Louisville Property Company, binding and res judicata so as to prevent the Commissioner of Internal Revenue from collecting income taxes from the former which he assessed against the latter?

STATUTES INVOLVED.

The statutes involved are §§ 52, 142, and 161 of the Revenue Acts of 1934 and 1936 and §§ 1117, 1140, and 1142 of the Internal Revenue Code.

STATEMENT OF THE CASE.

The Louisville Property Company is a corporation organized in 1898 under the laws of Kentucky for the purpose of holding and dealing in real estate (R. 71).

In 1919 the Court of Appeals of Kentucky ordered that a receiver should be appointed and that the corporation's property should be sold and its affairs wound up. *Bernheim v. Louisville Property Co.*, 185 Ky. 63, 214 S. W. 801. The stockholders, directors, and creditors realized that receivership would prove expensive and that the stockholders might realize nothing through such procedure. They thereupon agreed upon a plan in lieu of receivership, whereby on November 6, 1919, all the assets of the corporation were conveyed in fee simple to the United States Trust Company of Louisville in trust for the payment of the debts of the corporation and the expenses of administration, with any remainder over to go to the then stockholders, or their assignees, at the time of distribution (R. 71-72; Ex. 1, R. 127-129). The corporation then published notice that it was closing up its business and winding up its affairs. Since that time the corporation has not owned any property and has not carried on any business, but the corporate charter has been kept alive for the sole purpose of keeping a record of the stockholders who would be entitled to the distributions if and when made (R. 73-74).

The United States Trust Company proceeded to dispose of the assets received by it as stated above and by 1935 had disposed of a large part of them and had applied the proceeds on the debts of the corporation. On May 11, 1935, it petitioned the Whitley Circuit Court of Kentucky to be relieved of its trusteeship. The petition was granted and the court appointed H. C. Williams as successor Assignee of the Louisville Property Company in substitution for the United States Trust Company. The Court ordered that the action be retained on the docket of the court for such further proceedings as might be necessary and for settlement of the accounts of H. C. Williams and that the action proceed under the style of "H. C. Williams, Assignee of the Louisville Property Company, plaintiff", etc. (R. 74, 117, 134-136).

H. C. Williams then proceeded to administer and dispose of the assets as he could without sacrificing them. In all transactions pertaining to said property he used the title "H. C. Williams, Assignee of the Louisville Property Company", prescribed by the Court (R. 74-75, 116-118).

Some of the lands transferred to H. C. Williams contained coal and he leased the coal to operators and received royalties on same, but he has never carried on any mining operations. He also sold standing timber from some of the lands, but he never cut or manufactured any timber himself and never carried on any timber operations (R. 75, 118-119).

Since his appointment, Mr. Williams has had no business connections or dealings with the Louisville Property Company. He was not a stockholder, director, or officer of the corporation when appointed and has not been since. He has made no report to the corporation and it has made no demands upon him and has never exercised any authority over the said properties. The reports which Williams has made were all made to the Whitley Circuit Court (R. 76, 119).

During the years 1935 and 1936 H. C. Williams realized taxable income on the properties which he administered. For each year he filed fiduciary income returns on Form 1041, in the caption of which he designated the trust as "Louisville Property Company" and the name of the fiduciary as "H. C. Williams, Assignee, Middlesboro, Kentucky". These returns disclosed net income in the amounts of $1,577.53 and $9,140.80, respectively. Said returns were only information returns required by law. (R. 77, 124, 149; Ex. 10, 151; Ex. A.)

For the years 1935 and 1936, H. C. Williams also filed income tax returns on Form 1040, the form prescribed for use by trustees in reporting their tax liability. These returns were filed in the name of "H. C. Williams, Assignee, Louisville Property Company" and disclosed tax liabilities of $23.14 and $614.11, respectively. Said taxes were paid

by Williams on March 26, 1936, and April 14, 1937, respectively. (R. 77, 124, 143; Ex. 3, 147; Ex. 9.)

Upon consideration of said fiduciary and income tax returns, the Commissioner of Internal Revenue determined that H. C. Williams was operating the business of Louisville Property Company and that the corporation should be taxed under the provisions of § 52 of the Revenue Acts of 1934 and 1936 (R. 20). On November 26, 1938, the Commissioner addressed a letter to "Louisville Property Company, H. C. Williams, Assignee, Middlesboro, Kentucky" in which he asserted deficiencies in income tax for 1935 and 1936 (computed on the corporation basis) (R. 18-24). Said letter was sent by registered mail and was received by H. C. Williams. He thereupon (on December 12, 1938) filed with the United States Board of Tax Appeals a petition in which he appealed from said deficiency notice *only* as trustee and successor trustee of the United States Trust Company of Louisville (R. 6-18, 125). Said petition was given Docket No. 96414 on the Board's Docket. Said petition alleged that "the petitioner is an individual * * * acting in a trustee capacity" (R. 7). Again it alleged (R. 16) that "The petitioner denies that he is acting in a corporate capacity". The petition was prepared and signed by one B. I. Dahlberg as counsel for petitioner (R. 17, 29, 125). B. I. Dahlberg was a certified public accountant (R. 124). The petition was verified by "H. C. Williams, Trustee Louisville Property Company" (R. 17-18).

On January 20, 1939, the Commissioner of Internal Revenue filed with the Board a "Motion to Dismiss" the aforesaid petition (R. 25).

On February 13, 1939, B. I. Dahlberg wrote a letter to the Clerk of the Board (R. 29-30) with which he transmitted another petition captioned "Louisville Property Company, H. C. Williams, Assignee, Middlesboro, Kentucky, Petitioner," etc. Said petition was "filed" by the Board on February 15, 1939, and given Docket No. 97126 (R. 30-34). It alleged, among other things, that "the petitioner is an

individual * * * acting in a trustee or assignee capacity" (R. 31); that "the petitioner is H. C. Williams, Trustee of Louisville Property Company or Assignee or whatever legal terms may be applied" (R. 32); and that "the petitioner denies that he is acting in a corporate capacity" (R. 32).

On March 3, 1939, the Board entered an order (R. 34-35) denying the Commissioner's motion to dismiss; ordering that the proceeding at Docket No. 97126, with all papers pertaining thereto, be transferred to and consolidated with the proceedings at Docket No. 96414; that Docket No. 97126 be closed of record; and that the proceeding proceed under the caption "Louisville Property Company, H. C. Williams, Assignee, Middlesboro, Kentucky, Petitioner", Docket No. 96414.

On March 20, 1939, the Commissioner filed an "Answer to Original and Amended Petitions" (R. 35-36).

On October 27, 1939, H. C. Williams filed with the Board of Tax Appeals a petition appealing from a similar deficiency letter for the year 1937 (R. 85-90). Said petition was captioned "H. C. Williams, Successor Assignee in Trust for the Benefit of the Creditors and Stockholders of Louisville Property Company, Petitioner" and was given Docket No. 100,467. Said petition alleged that it was an appeal from said deficiency letter "in so far as said notice of deficiency is held to assert a deficiency in tax against this petitioner" and that "the petitioner is a fiduciary". Said petition was verified by H. C. Williams as successor assignee in trust of the property of Louisville Property Company.

On November 27, 1939, the Commissioner of Internal Revenue filed a "Motion to Dismiss" the 1937 petition (R. 95-96). A hearing was had on said motion on December 20, 1939 (R. 96-107), in which the counsel for the Commissioner made it plain that the tax was asserted against the corporation and not against H. C. Williams, Assignee, who filed the petition. Thereupon the Board raised the question of its jurisdiction and on December 20, 1939, entered an

"Order of Dismissal" (R. 107-108), wherein it dismissed the proceeding because "the deficiency was determined against a corporation and the notice sent to the corporation * * *, whereas the petition is filed by a wholly different person". Said order of the Board was not appealed and became final on March 20, 1940.

Prior to the hearing on the merits of the 1935 and 1936 case, H. C. Williams by a proper pleading put in issue (R. 45) the question of whether the Board's determination in the 1937 proceeding (Docket No. 100,467) was final, res judicata, and binding on the Board (R. 37-47).

On May 24, 1940, the Board promulgated an interlocutory opinion on the question of jurisdiction (R. 47-54) wherein it held that the Board had jurisdiction. No mention was made in that opinion of the Board's action in dismissing the 1937 case for want of jurisdiction, although such dismissal had been pleaded and presented (R. 45).

After a hearing on the merits of the petition the Board on June 3, 1942, promulgated its "Findings of Fact and Opinion" (R. 69-84) and on September 3, 1942, it entered its "Decision" (R. 84). The Board held that the petitioner was the same party against whom the Commissioner determined the deficiencies for 1935 and 1936 and that H. C. Williams was operating the property or business of Louisville Property Company and should have rendered corporation returns under § 52 of the Revenue Acts of 1934 and 1936.

The United States Circuit Court of Appeals for the Sixth Circuit affirmed the decision of the Board.

The petition for review was filed in the Circuit Court and this petition for certiorari is being filed in the name of "Louisville Property Company, H. C. Williams, Assignee, Middlesboro, Kentucky, Petitioner," etc., because the Board ordered that the proceeding be carried on in that name (R. 34-35, 57). The petitioner is H. C. Williams, the successor assignee in trust of property of Louisville Property Company, designated by the Whitley Circuit Court of Kentucky as "H. C. Williams, Assignee of the Louisville Property Company".

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court erred:

1. In failing to hold that the order of the Board of Tax Appeals, dismissing the petition of H. C. Williams, Successor Assignee, etc., in the 1937 case, is *res judicata* of this action.

2. In finding and holding that H. C. Williams, Successor Assignee, etc., was operating the business or property of the Louisville Property Company so as to make him, or the trust of which he was trustee, taxable as a corporation under § 52 of the Revenue Acts of 1934 and 1936.

REASONS FOR GRANTING THE WRIT.

The reasons for granting the writ in this case are the same as those stated in the companion case of *National Bank of Middlesboro* v. *United States of America* decided with the instant suit and in which a petition for a writ of certiorari has also been filed. The attention of the Court is, therefore, respectfully invited to that petition and also to the brief in support of it for a discussion of the principles involved and the reasons for granting this writ.

CONCLUSION.

It is respectfully submitted that this petition for a writ of certiorari should be granted.

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May, 1944.